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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11
12 Case No. **2010-665**

13 In the Matter of the Accusation Against:

14 LYNDA MARIE ALLEN, RN
2981 Bimini Place
Costa Mesa, CA 92626

A C C U S A T I O N

15 Registered Nurse License No. 388368

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 31, 1985, the Board of Registered Nursing issued Registered
24 Nurse License Number 388368 to Lynda Marie Allen, RN (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on June 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on a license.

6. Section 2811(b) of the Code provides, in part, that each license not renewed shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee and upon submission of proof of the applicant's qualifications.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or
4 to suspend or revoke a license or otherwise take disciplinary action against a
5 person who holds a license, upon the ground that the applicant or the licensee has
6 been convicted of a crime substantially related to the qualifications, functions, and
7 duties of the licensee in question, the record of conviction of the crime shall be
8 conclusive evidence of the fact that the conviction occurred, but only of that fact,
 and the board may inquire into the circumstances surrounding the commission of
 the crime in order to fix the degree of discipline or to determine if the conviction is
 substantially related to the qualifications, functions, and duties of the licensee in
 question.

9 As used in this section, "license" includes "certificate," "permit,"
10 "authority," and "registration."

11 10. Section 2761 of the Code states:

12 The board may take disciplinary action against a certified or licensed nurse
13 or deny an application for a certificate or license for any of the following:

14 (a) Unprofessional conduct, which includes, but is not limited to, the
15 following:

16

17 (f) Conviction of a felony or of any offense substantially related to the
18 qualifications, functions, and duties of a registered nurse, in which event the record
19 of the conviction shall be conclusive evidence thereof.

20

21 11. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the
23 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
24 a person licensed under this chapter to do any of the following:

25 (a) Obtain or possess in violation of law, or prescribe, or except as directed
26 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or
27 herself, or furnish or administer to another, any controlled substance as defined in
28 Division 10 (commencing with Section 11000) of the Health and Safety Code or
 any dangerous drug or dangerous device as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 (commencing
2 with Section 11000) of the Health and Safety Code, or any dangerous drug or
3 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
4 or in a manner dangerous or injurious to himself or herself, any other person, or
5 the public or to the extent that such use impairs his or her ability to conduct with
6 safety to the public the practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription,
8 consumption, or self-administration of any of the substances described in
9 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
10 record pertaining to, the substances described in subdivision (a) of this section, in
11 which event the record of the conviction is conclusive evidence thereof.

12

13 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
14 entries in any hospital, patient, or other record pertaining to the substances
15 described in subdivision (a) of this section.

16 12. Section 2765 of the Code states:

17 A plea or verdict of guilty or a conviction following a plea of nolo
18 contendere made to a charge substantially related to the qualifications, functions
19 and duties of a registered nurse is deemed to be a conviction within the meaning of
20 this article. The board may order the license or certificate suspended or revoked, or
21 may decline to issue a license or certificate, when the time for appeal has elapsed,
22 or the judgment of conviction has been affirmed on appeal or when an order
23 granting probation is made suspending the imposition of sentence, irrespective of a
24 subsequent order under the provisions of Section 1203.4 of the Penal Code
25 allowing such person to withdraw his or her plea of guilty and to enter a plea of
26 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
27 information or indictment.

28 13. Health and Safety Code section 11368 states:

Every person who forges or alters a prescription or who issues or utters an
altered prescription, or who issues or utters a prescription bearing a forged or
fictitious signature for any narcotic drug, or who obtains any narcotic drug by any
forged, fictitious, or altered prescription, or who has in possession any narcotic
drug secured by a forged, fictitious, or altered prescription, shall be punished by
imprisonment in the county jail for not less than six months nor more than one
year, or in the state prison.

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

15. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the license has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **DRUG**

4 17. Vicoprofen, a brand name for hydrocodone and ibuprofen, is a Schedule III controlled
5 substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug
6 pursuant to Business and Professions Code section 4022.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (March 12, 2001 Convictions for DUI on October 13, 2000)

9 18. Respondent is subject to disciplinary action under sections 490 and 2761(f) of the
10 Code in that she was convicted of crimes that are substantially related to the qualifications,
11 functions, and duties of a registered nurse. The circumstances are as follows:

12 a. On or about March 12, 2001, in a criminal proceeding entitled *People of*
13 *the State of California v. Lynda Marie Allen*, in the Orange County Superior Court, case number
14 01CM01840, Respondent was convicted on her plea of guilty to violation of Vehicle Code
15 sections 23152(a), driving under the influence of alcohol and 23152(b), driving while having a
16 blood alcohol content of .08 percent or more by weight with an enhancement for having a
17 concentration of alcohol in her blood of .20 percent and more by weight.

18 b. The facts that led to the conviction were that on or about October 13, 2000,
19 a Tustin Police Department officer responded to the scene of a traffic collision at Tustin Ranch
20 and El Camino in Tustin, California. The officer approached the first vehicle and observed the
21 driver staring at the windshield with a blank look on her face. The driver was later identified as
22 Respondent. When the officer asked Respondent if she was okay, Respondent slowly turned to
23 him and stared at the officer with no expression. She then stated that she was broken down. The
24 officer observed a strong odor of alcohol on Respondent's breath and asked Respondent to put her
25 vehicle in park. Respondent had her three children in the vehicle.

26 c. The officer then approached the driver of the other vehicle that was
27 involved in the collision. The driver stated that Respondent's vehicle hit her vehicle from behind.
28 The driver stated that she did not want a police report because there was no damage and then left

1 the scene. The officer then returned to Respondent's vehicle and asked her if she realized she had
2 hit the other vehicle. When the officer asked Respondent if she had been drinking or had taken
3 any medication, Respondent stated, "yes, both." Respondent admitted that she took two Ultram
4 "pain killers" and had three glasses of wine.

5 d. Respondent's husband then arrived at the scene. The officer asked
6 Respondent's husband to take Respondent's children. After Respondent unsuccessfully
7 performed the field sobriety test, Respondent was arrested and submitted a blood sample.
8 Respondent's blood alcohol content was .29 percent by body weight, more than three times the
9 legal limit.

10 e. As a result of her convictions, Respondent was sentenced to three years
11 informal probation, ordered to pay all fines, fees and restitution, required to enroll and complete
12 the six month First Offender Program- Level Two, ordered to install an ignition interlock device,
13 and sentenced to five days in custody.

14 SECOND CAUSE FOR DISCIPLINE

15 (September 20, 2006 Convictions for DUI and Child Endangerment on June 22, 2006)

16 19. Respondent is subject to disciplinary action under sections 490 and 2761(f) of the
17 Code in that she was convicted of crimes that are substantially related to the qualifications,
18 functions, and duties of a registered nurse. The circumstances are as follows:

19 a. On or about September 20, 2006, in a criminal proceeding entitled *People of*
20 *the State of California v. Lynda Marie Allen*, in the Orange County Superior Court, case number
21 06CM05501, Respondent was convicted on her plea of guilty to violation of Vehicle Code section
22 23152(a), driving under the influence of alcohol, Vehicle Code section 23152(b), driving while
23 having a blood alcohol content of .08 percent or more by weight, and four counts of violation of
24 Penal Code section 273a(b), child endangerment by caretaker. Respondent also pled guilty for
25 violation of Business and Professions Code section 4606, possession of a controlled substance
26 without a prescription; however, Respondent enrolled and completed a Drug Diversion Program
27 pursuant to Penal Code section 1000.
28

1 b. The circumstances that led to the conviction were that on or about June 22,
2 2006, officers from the Orange Police Department received a call from a witness regarding a
3 possible drunk driver of a Ford Focus, with four children in the passenger seats. The witness had
4 followed the Ford and reported seeing the vehicle stop several times as if the driver was
5 disoriented. The Ford was seen swerving from lane to lane on Jamboree Road in Tustin,
6 California. The Ford was located by the officers as it drove on the wrong side of the road on
7 Township Road. The Ford was stopped and Respondent was identified as the driver of the
8 vehicle. When the officers asked Respondent to exit the vehicle, Respondent placed her right
9 hand on the driver's door to assist her in getting out. Respondent staggered and stopped twice to
10 gather her balance. Respondent identified the children in her vehicle, stating that her son was in
11 the front seat and his friends were in the back seat. Respondent stated that she was coming from
12 her son's birthday party at Wild Rivers in Irvine. When asked where she lived, Respondent
13 stated, "Tustin, I was lost and I couldn't find my way home. I live around here I think."

14 c. While speaking to Respondent, the officer observed that she had a strong odor
15 of alcohol, her eyes were bloodshot, watery and had a glazed appearance, and her speech was
16 slurred. The officer asked Respondent if she had been drinking and she stated "I had two drinks."
17 When asked what she drank, Respondent stated "two beers and a cocktail." Respondent also
18 stated that she drank at Wild Rivers in Irvine. When asked whom she drank with, Respondent
19 stated, "by myself" and admitted that she did so while the children were on the rides. Respondent
20 also admitted to taking medication for pain and anti-depressants but she could not remember the
21 name of the medications.

22 d. An officer spoke with the witness who had followed Respondent's vehicle.
23 The witness reported that he followed Respondent's vehicle as it swerved from lane to lane.
24 When Respondent's vehicle entered a shopping center, the witness pulled up next to her vehicle
25 and told Respondent to pull over. The witness then told Respondent to call someone to pick her
26 and the children up because she was not in a condition to drive. Respondent then sped off
27 southbound on Jamboree Road. The witness continued to follow Respondent until officers
28 stopped Respondent's vehicle.

1 e. Respondent unsuccessfully performed a field sobriety test and was arrested
2 for driving under the influence and child endangerment. The officer searched Respondent and
3 discovered several pills wrapped inside a white napkin that was inside the front left pocket of her
4 shorts. Respondent stated "I take my prescribed pills and then I drink a beer because the pills
5 work better when I drink. I take my pills to help me relax and sleep." The pills were 8 tablets of
6 Altrazolam 25 mg., 35 tablets of Oxiconon 30 mg., and 3 tablets of Lunesta 3 mg.

7 f. As a result of her convictions, Respondent was sentenced to 4 years
8 informal probation, ordered to attend and complete the Domestic Violence Child Abuser's
9 Treatment Program, required to complete 8 hours of community service, ordered to pay all fines,
10 fees, and restitution, required to attend and complete the 18 month Multiple Offender Alcohol
11 Program and MADD Victim's Impact Panel program, and ordered to comply with the terms of a
12 Protective Order prohibiting Respondent from contacting the unrelated children that were in her
13 vehicle on the day of the incident. Respondent was sentenced to serve 180 days in custody,
14 stayed, pending completion of a 6 month treatment program at Oasis Treatment Center.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct – Possession of a Controlled Substance without a Prescription)

17 20. Respondent is subject to disciplinary action under section 2762(a) of the Code in
18 that on or about June 22, 2006, Respondent possessed a controlled substance without a
19 prescription in connection with her driving under the influence arrest as set forth in paragraph 19,
20 above, which is incorporated herein by reference.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (Use of Alcohol in a Manner Dangerous to Self or Others)

23 21. Respondent is subject to disciplinary action under section 2762(b) of the Code in
24 that on or about October 13, 2000 and June 22, 2006, Respondent used alcohol to an extent as to
25 be dangerous to herself or others, as set forth in paragraphs 18 and 19, above, which are
26 incorporated herein by reference.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Alcohol Related Convictions)

3 22. Respondent is subject to disciplinary action under 2762(c) of the Code in that on
4 or about March 12, 2001 and September 20, 2006, Respondent was convicted of criminal offenses
5 involving alcohol, as set forth in paragraphs 18 and 19 above, which are incorporated herein by
6 reference.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct – Obtaining Controlled Substance By Forgery)

9 23. Respondent is subject to disciplinary action under 2762(a) and (e) of the Code in
10 that Respondent obtained a controlled substance by forging a prescription. The circumstances are
11 as follows:

12 a. On or about February 11, 2005, the Newport Beach Police Department
13 received a call regarding a commercial burglary of a doctor's office. When officers arrived, the
14 doctor's secretary indicated that she received a call on January 18, 2005 from a pharmacist at Rite
15 Aid Pharmacy in Tustin, indicating that a different prescription form was needed for the drug,
16 Vicoprofen. The secretary asked the name of the patient, checked the records and then asked the
17 pharmacist to fax over a copy of the prescription. The secretary then examined the prescription,
18 observed that the signature was not the doctor's signature, told the pharmacist that the
19 prescription was forged, and instructed the pharmacist not to give the person the drugs. The
20 doctor's secretary also informed the police that on or about February 10, 2005, the office manager
21 at the doctor's office received a phone call from a pharmacist at Savon Drugs in Buena Park,
22 indicating that a female subject was attempting to pick up a prescription for Vicoprofen. The
23 pharmacist stated that the prescription was written on the wrong prescription form. The
24 prescription was faxed to the doctor's office. The prescription was written for Respondent's child,
25 who was a patient of the doctor's. However, the doctor's office indicated that Vicoprofen had
26 never been prescribed to this patient. The officers were informed that Respondent had been in the
27 doctor's office with her child on November 16, 2004, December 7, 2004, January 17, 2005 and
28 February 1, 2005. A pad containing 100 blank prescriptions was located in a desk drawer near

1 the doctor's waiting room. On January 18, 2005, the doctor's staff noticed that the prescription
2 pad was gone from the desk drawer.

3 b. Respondent was interviewed at the Newport Beach Police Department on
4 March 16, 2006. Respondent admitted that she took prescription pad from the doctor's office. At
5 first, Respondent stated that she threw the prescription pad away but then later admitted to filling
6 out two of the prescriptions and attempting to obtain Vicoprofin. Respondent stated that she had
7 asked the doctor to prescribe her daughter pain medication but he refused. Respondent admitted
8 that she forged the prescriptions but that she was unable to fill any of the prescriptions. When the
9 officer indicated that there was information that she had filled one of the prescriptions,
10 Respondent recanted her story and admitted that she did obtain one of the prescriptions.
11 Respondent admitted that she wrote out both of the prescriptions and signed the doctor's name.

12 c. On or about August 14, 2006, in a criminal proceeding entitled *People of*
13 *the State of California v. Lynda Marie Allen*, in Orange County Superior Court case number
14 06HF0821, Respondent pled guilty to violation of Health and Safety Code section 11368, forging
15 a prescription to obtain a narcotic. On her plea of guilty form, Respondent admitted that on
16 February 8, 2005, she "willfully and unlawfully forged a prescription in order to obtain a narcotic
17 for personal use." Respondent was sentenced to 3 years probation and ordered to pay all fines
18 and fees. Entry of judgment was deferred and Respondent was ordered to enroll in a drug
19 program pursuant to Penal Code section 1000.

20 e. On March 13, 2008, after the completion of the PC 1000 drug program,
21 Respondent's guilty plea was withdrawn, the judgment was vacated and the case was dismissed.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking or suspending Registered Nurse License Number 388368, issued to Lynda
26 Marie Allen, RN
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28

1 2. Ordering Lynda Marie Allen to pay the Board of Registered Nursing the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 6/28/10 *Louise R. Bailey*
7 LOUISE R. BAILEY, M.ED., RN
8 Interim Executive Officer
9 Board of Registered Nursing
10 Department of Consumer Affairs
11 State of California
12 Complainant

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